

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)

Implementation of the Cable
Television Consumer Protection
and Competition Act of 1992)Broadcast Signal
Carriage Issues)

MM Docket No. 92-259

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS OF THE CURATORS OF
THE UNIVERSITY OF MISSOURI**

The Curators of the University of Missouri, licensee of commercial television Station KOMU-TV, Channel 8, Columbia, Missouri ("KOMU-TV"), hereby submits Reply Comments in response to the Commission's Notice of Proposed Rule Making ("NPRM"), FCC 92-499, released November 19, 1992.^{1/} That NPRM seeks to implement the broadcast signal carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992").

I. Introduction

1. The Curators of the University of Missouri are the governing body of the University. KOMU-TV, which is licensed to The Curators, is a VHF commercial television station and an NBC network affiliate. It is one of only three commercial television stations in the United States licensed to an educational

^{1/} These Reply Comments are timely filed in accordance with the schedule set forth in the NPRM.

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institution. KOMU-TV commenced operation on December 21, 1953 and through the years has strived to serve the needs and interests of the residents of mid-Missouri. In addition, the station serves as a practicum laboratory for students studying journalism at the University of Missouri School of Journalism in Columbia -- the oldest school of journalism in the United States.

II. The Use of ADIs To Define a Broadcasting Station's Market Will Produce Anomalous Results Which The Commission Should Guard Against

2. Under Section 614(h)(1)(c) of the Cable Act of 1992, a broadcasting station's market is to be determined in the manner provided in Section 73.3555(d)(3)(i) of the Commission's rules as in effect on May 1, 1991, but the Commission is permitted to make modifications that it deems necessary. The rule section set forth in the Act refers to Arbitron's Area of Dominant Influence ("ADI") market definition in applying "national audience reach" under the multiple ownership rules.

3. In its NPRM, the Commission comments that ADIs vary considerably in size, some encompassing large geographic areas and others including only one county. The Commission seeks comment on the appropriate procedures to add or subtract communities from a designated market. The NPRM proposes to consider such requests as petitions for special relief under the provisions of Section 76.7 of the rules.

4. KOMU-TV is particularly concerned about the use of the ADI concept where top 100 ADIs surround a smaller television market ADI. Up until now KOMU-TV and all of the stations in the

surrounding larger markets have been able to serve ten mid-Missouri counties which have shifted ADIs over the years. These ten counties are rural in nature and KOMU-TV has provided them with a substantial amount of local news and public affairs programming addressing local issues whereas the larger markets have not provided such programming. If the ADI concept is adopted, these counties will become eligible for must-carry by the stations in the larger surrounding ADI markets which do not address local issues. It will be virtually impossible for KOMU-TV to regain these counties in its ADI. The net result is that a lot of local communities will not be able to receive KOMU-TV's signal unless the station incurs extensive copyright obligations even though KOMU-TV now serves the ten affected counties and offers them substantial local programming. KOMU-TV submits that some remedy, such as a grandfathering of present service, is appropriate in this situation.

5. After reviewing the NPRM and the Comments that have been filed in this proceeding, KOMU-TV wishes to bring to the Commission's attention a specific example of the anomalous results that occur by using ADIs to define a broadcasting station's market. Use of the ADI concept to define the Columbia-Jefferson City market, where KOMU-TV is located, is likely to reduce the carriage of network signals and signals offering local programming which cable systems presently provide to many subscribing households. Columbia, Missouri is approximately 125 miles west of St. Louis, Missouri, 180 miles north and east of Springfield, Missouri, and 125 miles east of Kansas City, Missouri. St. Louis is ranked number 18 in Arbitron ADI TV

households; Springfield is ranked number 82; and Kansas City is ranked number 29. The Columbia-Jefferson City television market is ranked number 153. Because the distances between Columbia and each of the three larger cities are substantial, there are a number of counties that have shifted back and forth from one ADI to another over the years. At the present time, there are ten counties (Camden, Monroe, Montgomery, Pettis, Saline, Gasconade, Macon, Benton, Phelps and Linn) in which cable subscribers receive the signal of KOMU-TV and also signals from one of the three larger communities. These counties are outside KOMU-TV's 55 mile zone and outside the 35 mile zone of the larger cities. KOMU-TV, which is significantly viewed in these counties, provides news and local programming covering issues facing these counties whereas the larger market stations do so rarely or not at all. KOMU-TV's Grade B contour covers all or part of these counties (all but Benton and Linn counties) yet KOMU-TV's ADI does not include any of these counties. In KOMU-TV's case, use of the ADI to determine the local broadcast market is likely to adversely impact on cable subscribers in the ten counties referenced above. The St. Louis, Springfield and Kansas City stations will be able to demand must-carry status in each of these counties within their respective ADIs even though the majority of the ten affected counties are closer to Columbia and more economically and regionally tied to Columbia-Jefferson City than they are to the larger cities.

6. KOMU-TV estimates that there are 45-50 cable systems in the ten affected counties. It has a grave concern that the special relief mechanism may not be workable given the magnitude

of the problem. For instance, it would be far preferable if KOMU-TV did not have to file 45-50 petitions for special relief. Furthermore, such petitions presently require filing fees which would pose a significant expense given the number of cable systems involved.

7. KOMU-TV urges the Commission to recognize the problem of relying solely on the ADI concept and to recognize that Grade B coverage and/or local service has substantial importance justifying a grandfathering provision which covers the situation described. Alternatively, if the FCC believes that a request for special relief is necessary, KOMU-TV urges the Commission to set early time frames for submitting such requests and to provide an appropriate framework for consolidating requests that affect a particular market. Pursuant to Section 614(h)(C)(iv) of the Cable Act of 1992, cable operators should not be permitted to delete a commercial television signal from carriage during the pendency of any request to redefine a market.

8. It has been suggested by a number of commenters that the ADI designations be established in advance of the three-year must-carry/retransmission consent election cycle contemplated by the Cable Act of 1992. KOMU-TV has no objection to this timetable as long as sufficient leeway is provided for the Commission to make necessary determinations concerning the addition or exclusion of communities from an ADI.

**III. The Election Procedures Advocated By
The Cable Interests Would Defeat The
Purposes Of The Cable Act of 1992**

9. The National Cable Television Association ("NCTA") argues that a station's election between must-carry and retransmission consent should be "applied to all cable systems within an ADI . . ." (NCTA Comments, p. 27). NCTA further urges an early deadline for making the election and contends "that all elections must be made on a single date, and that retransmission consent negotiations between a local station and system cannot take place until the election is made." (NCTA Comments, pp. 29-30).

10. The proposals advanced by NCTA are antithetical to the Cable Act of 1992. The Act contemplates that each television station will make a single election for each cable system in its market and if there is "more than one cable system which services the same geographic area, a station's election shall apply to all such cable systems." The FCC has correctly interpreted the legislative history as meaning that a station must make the same election for all directly competing cable systems. There is no legislative support for NCTA's claim that "geographic area" is the same as the station's ADI.

11. The early election requirement advocated by NCTA would defeat a broadcaster's opportunity to negotiate an agreement for retransmission consent. The procedure suggested by the FCC as endorsed in the NAB's Comments for must-carry/retransmission consent elections contemplates a meaningful transition. Under that procedure, implementation of the must-carry rules would

become effective at an early date and broadcasters would have until August 2, 1993 deadline to notify cable systems of their election. If retransmission consent is to work, broadcasters must have a sufficient opportunity to reach the necessary agreements.

III. The 1992 Cable Act Gives Television
Stations The Right To Determine
Channel Positioning

12. The NPRM seeks comment on the channel positioning requirements set forth in Section 614(b)(6) of the Cable Act of 1992. Some of the commenters, notably the cable interests, urge the Commission to permit cable operators to make a selection among competing broadcast stations (NCTA Comments, p. 22). KOMU-TV notes that the Act specifically gives television stations the right to make an election concerning channel position and requires the Commission to resolve any dispute. Section 614(b)(6). The findings set forth in the Act contain Congress' determination that cable systems have an economic incentive "to delete, reposition, or not carry local broadcast signals" Section 2(a)(15), (16) and (19). Therefore, as the National Association of Broadcasters ("NAB") has recommended, cable operators should not be given unilateral discretion to make channel positioning decisions. Instead, any conflict between broadcast stations should initially be resolved between the stations and by the FCC only if a resolution cannot be achieved.

Conclusion

In sum, KOMU-TV requests the Commission to recognize and provide relief for the small market television broadcaster when adopting a market definitional scheme for the implementation of the Cable Act of 1992. KOMU-TV also requests the Commission to provide a procedural schedule that will permit adequate time for stations to negotiate retransmission consent agreements with cable systems. The right to determine channel positioning on cable systems should be resolved by broadcasters and not by cable systems.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sybil Briggs, hereby certify that I have this 19th day of January, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "REPLY COMMENTS OF THE CURATORS OF THE UNIVERSITY OF MISSOURI" to the following:

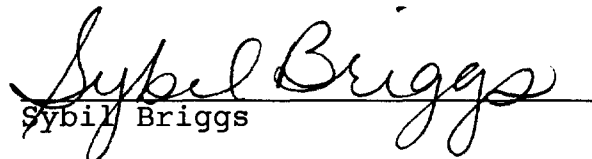
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